

1                   **HOUSE JOINT RESOLUTION NO. 25**

2                   (By Delegates J. Miller, Cowles, Andes,  
3                   Hall, Carmichael, Duke, Border  
4                   and Armstead)

5  
6                   [Introduced January 18, 2011; referred to the  
7                   Committee on Constitution Revision then the  
8                   Judiciary.]

9  
10 Proposing an amendment to the Constitution of the State of West  
11 Virginia, amending article III thereof by adding thereto a new  
12 section, designated section twenty-three, relating to  
13 preserving the freedom of West Virginians to provide for their  
14 healthcare thereof; numbering and designating such proposed  
15 amendment; and providing a summarized statement of the purpose  
16 of such proposed amendment.

17       *Resolved by the Legislature of West Virginia, two thirds of*  
18 *the members elected to each house agreeing thereto:*

19       That the question of ratification or rejection of an amendment  
20 to the Constitution of the State of West Virginia be submitted to  
21 the voters of the state at the next general election to be held in  
22 the year 2012, which proposed amendment is that article III  
23 thereof be amended by adding thereto a new section, designated  
24 section twenty-three, to read as follows:

25 **ARTICLE III. BILL OF RIGHTS.**

26 **§23. Healthcare Freedom Amendment.**

1       To preserve the freedom of West Virginians to provide for  
2 their healthcare:

3               Subsection A -- No Compulsory Healthcare.

4       (1) A law or rule may not compel directly or indirectly any  
5 person, employer or healthcare provider to participate in any  
6 healthcare system.

7 Subsection B -- No penalties to be assessed for direct payment of  
8 healthcare services.

9       (2) A person or employer may pay directly for lawful  
10 healthcare services and may not be required to pay penalties or  
11 finances for paying directly for lawful healthcare services. A  
12 healthcare provider may accept direct payment for lawful healthcare  
13 services and may not be required to pay penalties or fines for  
14 accepting direct payment from a person or employer for lawful  
15 healthcare services.

16       Subsection C -- Sale of Private Health Insurance may not be  
17 prohibited.

18       (3) Subject to reasonable and necessary rules that do not  
19 substantially limit a person's options, the purchase or sale of  
20 health insurance in private healthcare systems may not be  
21 prohibited by law or rule.

22               Subsection D -- No compulsory healthcare.

23       (4) This section does not:

24       (a) Affect which healthcare services a healthcare provider or

1 hospital is required to perform or provide;

2 (b) Affect which healthcare services are permitted by law.

3 (c) Prohibit care provided pursuant to any provision of this  
4 Constitution or any statutes enacted by the Legislature relating to  
5 workers' compensation;

6 (d) Affect laws or rules in effect as of January 1, 2010;

7 (e) Affect the terms or conditions of any healthcare system to  
8 the extent that those terms and conditions do not have the effect  
9 of punishing a person or employer for paying directly for lawful  
10 healthcare services or a healthcare provider or hospital for  
11 accepting direct payment from a person or employer for lawful  
12 healthcare services.

13 *Subsection E -- Definitions.*

14 (5) For purposes of this section:

15 (a) "Compel" includes penalties or fines;

16 (b) "Direct payment or pay directly" means payment for lawful  
17 healthcare services without a public or private third party, not  
18 including an employer, paying for any portion of the service.

19 (c) "Healthcare system" means any public or private entity  
20 whose function or purpose is the management of processing of  
21 enrollment of individuals for or payment for, in full or in part,  
22 healthcare services or healthcare information for its participants.

23 (d) "Lawful healthcare services" means any health-related  
24 service or treatment to the extent that the service or treatment is

1 permitted or not prohibited by law or regulation that may be  
2 provided by persons or businesses otherwise permitted to offer  
3 such services.

4 (e) "Penalties or fines" means anv civil or criminal penalty  
5 or fine, tax, salary or wage withholding or surcharge or any named  
6 fee with a similar effect established by law or rule by a  
7 government established, created or controlled agency that is used  
8 to punish or discourage the exercise of rights protected under this  
9 section.

10 Resolved further, That in accordance with the provisions of  
11 article eleven, chapter three of the Code of West Virginia, 1931,  
12 as amended, such proposed amendment is hereby numbered "Amendment  
13 No. 1" and designated as "The Healthcare Freedom Amendment" and the  
14 purpose of the proposed amendment is summarized as follows "to  
15 preserve the freedom of West Virginians to provide for their  
16 healthcare."

NOTE: The purpose of this resolution is to preserve the freedom of West Virginians to provide for their healthcare by prohibiting coercion in healthcare choice and in payment for health services.

This section is new; therefore, it has been completely underscored.